

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 4, 2023 Session

FILED
08/09/2023
Clerk of the
Appellate Courts

VANDITY A. MITCHELL v. STATE OF TENNESSEE

Appeal from the Circuit Court for Davidson County
No. 21C2019 Joseph P. Binkley, Jr., Judge

No. M2022-00696-COA-R3-CV

This appeal involves a personal injury action arising out of a car accident in a state parking lot. The original defendants raised the defense of comparative fault by the State of Tennessee, and the plaintiff filed a notice of claim in the Division of Claims and Risk Management and, later, filed a complaint in the Claims Commission. After the Claims Commission transferred the matter to circuit court, the State moved to dismiss based on the expiration of the statute of limitations, and the court granted the motion. We affirm the trial court's ruling because, under Tenn. Code Ann. § 20-1-119, the complaint initiating a suit against the State was filed in the Claims Commission after the expiration of the 90-day grace period provided by the statute. Furthermore, we find the plaintiff's argument that the State waived the statute of limitations defense unpersuasive.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the Court, in which THOMAS R. FRIERSON, II, and W. NEAL MCBRAYER, JJ., joined.

Colin Brett Calhoun, Nashville, Tennessee, for the appellant, Vandity A. Mitchell.

Jonathan Skrmetti, Attorney General and Reporter, Andrée Blumstein, Solicitor General, and Lauren D. Rota, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of a car accident that occurred on April 18, 2018, in a parking lot owned by the State of Tennessee. Vandity Mitchell, a state employee, was driving in a westbound lane of travel in the parking lot. Mary Bell was driving in a southbound lane of travel in the parking lot that intersected with the westbound lane, and her car collided

with the car driven by Ms. Mitchell. The car driven by Ms. Bell was owned by Robert Bell, III, her father.

Ms. Mitchell filed a personal injury lawsuit against Mary and Robert Bell (“the Bells”) in the Circuit Court for Davidson County on April 15, 2019. In a first amended answer filed on February 22, 2021, the Bells denied any wrongful conduct and raised the defense of comparative fault against the State of Tennessee. The Bells alleged that the accident occurred because of the State’s “failure to exercise reasonable care to paint stop bars on the parking lot surface and/or erect stop signs at the end of each row of parking spaces to signal to motorists the end of the parking row and the beginning of the thru road” leading out of the parking lot to the street.

On March 31, 2021, Ms. Mitchell filed a notice of claim with the Division of Claims and Risk Management of the State Treasury Department (“the Division”). The Division transferred the case to the Tennessee Claims Commission (“the Claims Commission”) on May 18, 2021. Ms. Mitchell filed a complaint against the State of Tennessee in the Claims Commission on June 8, 2021. Ms. Mitchell also filed a motion to remove and transfer the Claims Commission case to the Davidson County circuit court for consolidation with the pending case against the Bells.

On June 22, 2021, the State filed a motion to dismiss in the Claims Commission for lack of subject matter jurisdiction, arguing that Ms. Mitchell’s claim against the State was barred by the exclusive remedy provisions of the workers’ compensation laws set forth at Tenn. Code Ann. § 50-6-108(a). After Ms. Mitchell filed an amended complaint in the Claims Commission, the State filed an amended motion to dismiss for lack of subject matter jurisdiction, again based upon the exclusive remedy provision, as well as for failure to state a claim upon which relief can be granted. After oral arguments, the Claims Commission entered an order on August 25, 2021, denying the State’s motion to dismiss and granting Ms. Mitchell’s motion to remove and transfer the case to circuit court.

The circuit court notified the parties on November 18, 2021, that the transfer had been accomplished. On December 17, 2021, the State filed, in circuit court, an “unopposed” motion for an extension of time through January 14, 2022, to file an answer or motion to dismiss. On January 13, 2022, the State filed a motion to dismiss for lack of subject matter jurisdiction on the grounds of the workers’ compensation exclusive remedy provision. Ms. Mitchell responded and filed a motion for default judgment on February 7, 2022. Ms. Mitchell argued that, because the Claims Commission had denied the State’s motion to dismiss, the State was required by Tenn. R. Civ. P. 12.01 to file an answer and that Ms. Mitchell had only agreed to an extension to the State’s filing of an answer. The State opposed Ms. Mitchell’s motion for default and filed a second motion to dismiss (based upon the statute of limitations) on February 16, 2022. On March 14, 2022, Ms. Mitchell filed a motion requesting that the circuit court consolidate her claim against the State with the pending case against the Bells.

On March 18, 2022, the trial court heard oral arguments on Ms. Mitchell's motion for default judgment and both of the State's motions to dismiss. At this hearing, the State asserted that Ms. Mitchell's claim against the State was time-barred under the Supreme Court's decision in *Moreno v. City of Clarksville*, 479 S.W.3d 795 (Tenn. 2015). The court granted Ms. Mitchell's request to file a supplemental brief, which she submitted on March 31, 2022. On March 31, 2022, the court entered orders denying Ms. Mitchell's motion for default and denying the State's first motion to dismiss.

After additional oral arguments on April 18, 2022, the court entered an order on April 27, 2022, granting the State's second motion to dismiss. The court ruled that Ms. Mitchell failed to file her claim against the State within the one-year statute of limitations.

Ms. Mitchell filed a timely notice of appeal and presents the following two issues on appeal:

- (1) Whether the trial court erred in concluding that Plaintiff was required to file the notice of claim required by Tenn. Code Ann. § 9-8-402(a) with the Division of Claims and Risk Management for the State within the one-year statute of limitations for a personal injury claim, implicitly holding that the 90-day savings provision of Tenn. Code Ann. § 20-1-119 is inapplicable to the State.
- (2) Whether Defendant waived the statute of limitations as an affirmative defense by failing to file a responsive pleading asserting the defense after the Tennessee Claims Commission denied its motion to dismiss and the case was removed and transferred to the Circuit Court for Davidson County, Tennessee.

STANDARD OF REVIEW

The trial court dismissed Ms. Mitchell's case against the State under Tenn. R. Civ. P. 12.02(6)¹ for failure to state a claim on the grounds that the statute of limitations had run. A motion under Rule 12.02(6) "challenges the legal sufficiency of the complaint, not the strength of the plaintiff's proof." *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 696 (Tenn. 2002). In reviewing the trial court's ruling, we must "construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences." *Id.* We review the trial court's legal conclusions de novo with no presumption of correctness. *Id.* at 696-97.

¹ The State acknowledges that its motion to dismiss based on the statute of limitations erroneously cited Tenn. R. Civ. P. 12.02(1) for lack of subject matter jurisdiction instead of Tenn. R. Civ. P. 12.02(6). A motion to dismiss based upon the statute of limitations is properly brought under Tenn. R. Civ. P. 12.02(6). *Young ex rel. Young v. Kennedy*, 429 S.W.3d 536, 546 (Tenn. Ct. App. 2013). In accordance with previous cases, we "give effect to the substance of the motion according to the relief sought," regardless of the rule referenced by the party in the motion. *Ferguson v. Brown*, 291 S.W.3d 381, 387 (Tenn. Ct. App. 2008).

This case also requires this Court to interpret statutes. Statutory construction presents a question of law, which we review de novo with no presumption of correctness. *Moreno*, 479 S.W.3d at 802; *Austin v. State*, 222 S.W.3d 354, 357 (Tenn. 2007).

ANALYSIS

(1) Whether the claim was time-barred

The trial court dismissed Ms. Mitchell’s claim against the State on the grounds that she failed to file her claim within the one-year statute of limitations, as required by Tenn. Code Ann. § 9-8-402(b).

Tennessee Code Annotated section 9-8-402(b) is part of the statutes governing the Division, a body established by the General Assembly at the same time it established the Claims Commission. *See Kampmeyer v. State*, 639 S.W.3d 21, 24 (Tenn. 2022). The Claims Commission was created “to adjudicate certain types of claims against the State.” *Id.* The Division was created “to facilitate informal settlement of claims against the State.” *Id.* Both entities are currently part of the Department of Treasury. *Id.* Tennessee Code Annotated section 9-8-402(a)(1) requires a claimant to provide “written notice of the claimant’s claim” to the Division “as a condition precedent to recovery.” Subsection (b) states, in pertinent part, that, “The claim is barred unless the notice is given within the time provided by statutes of limitations applicable by the courts for similar occurrences from which the claim arises.” Tenn. Code Ann. § 9-8-402(b). The applicable statute of limitations here is the one-year statute of limitations for actions for “injuries to the person” set forth in Tenn. Code Ann. § 28-3-104(a)(1)(A).

The other statutory provision at play here, Tenn. Code Ann. § 20-1-119(a), is part of Tennessee’s comparative fault statute. *See Moreno*, 479 S.W.3d at 802-03. The relevant version of the statute provides, in pertinent part:

(a) In civil actions where comparative fault is or becomes an issue, if a defendant named in an original complaint initiating a suit filed within the applicable statute of limitations, or named in an amended complaint filed within the applicable statute of limitations, alleges in an answer or amended answer to the original or amended complaint that a person not a party to the suit caused or contributed to the injury or damage for which the plaintiff seeks recovery, and if the plaintiff’s cause or causes of action against that person would be barred by any applicable statute of limitations but for the operation of this section, *the plaintiff may, within ninety (90) days of the filing of the first answer or first amended answer alleging that person’s fault, either:*

(1) Amend the complaint to add the person as a defendant pursuant to Tenn. R. Civ. P. 15 and cause process to be issued for that person; or

(2) *Institute a separate action against that person by filing a summons and complaint.* If the plaintiff elects to proceed under this section by filing a separate action, the complaint so filed shall not be considered an original complaint initiating the suit or an amended complaint for purposes of this subsection (a).

(b) A cause of action brought within ninety (90) days pursuant to subsection (a) shall not be barred by any statute of limitations. This section shall not extend any applicable statute of repose, nor shall this section permit the plaintiff to maintain an action against a person when such an action is barred by an applicable statute of repose.

...

(g) Notwithstanding any law to the contrary, this section applies to suits involving governmental entities.

Tenn. Code Ann. § 20-1-119 (2009) (emphasis added). The statute provides for “a ‘grace period’ for a plaintiff to add a defendant to the lawsuit even if the applicable limitations period has elapsed.” *Moreno*, 479 S.W.3d at 803 (quoting *Mills v. Fulmarque*, 360 S.W.3d 362, 370 (Tenn. 2012)). The grace period allows the plaintiff ninety (90) days from the filing of the pleading in which comparative fault was raised to either amend the complaint or file a separate action by “filing a summons and complaint.” Tenn. Code Ann. § 20-1-119(a)(2).

Ms. Mitchell argues that the trial court erred in implicitly holding that the 90-day savings provision in Tenn. Code Ann. § 20-1-119 did not apply. The State concedes that it is a “governmental entity” in accordance with § 20-1-119(g) and, therefore, is subject to the savings provision. The State asserts that the 90-day grace period did not save Ms. Mitchell’s claim because she failed to comply with the requirements of Tenn. Code Ann. § 20-1-119(a) for instituting a claim against the State. There is no dispute that the amended answer, filed by the Bells (on February 22, 2021), triggered a 90-day grace period for Ms. Mitchell to file suit against the State. The precise issue presented is whether Ms. Mitchell’s notice of claim filed with the Division on March 31, 2021, satisfied the requirement of subsection (a)(2) of Tenn. Code Ann. § 20-1-119 that she “[i]nstitute a separate action against [the State] by filing a . . . complaint.”² By the time Ms. Mitchell filed a complaint with the Claims Commission on June 8, 2021, the 90-day grace period had expired.

The Supreme Court’s decision in *Moreno v. City of Clarksville* answers the issue before this Court. In *Moreno*, the plaintiff was driving across a bridge in Clarksville on December 24, 2009, when a tree fell on his car; the tree was planted on property owned by the State of Tennessee. *Moreno*, 479 S.W.3d at 798. On December 17, 2010, the plaintiff filed a written notice of claim against the State with the Division. *Id.* The Division

² The State concedes that, because of the procedures of the Claims Commission, Ms. Mitchell was not required to file a summons.

transferred the plaintiff's claim to the Claims Commission on March 17, 2011. *Id.* The plaintiff filed a formal complaint against the State with the Claims Commission on April 14, 2011. *Id.* In its initial answer to the complaint, the State did not mention other tortfeasors. *Id.* at 798-99. After sixteen months of discovery, the State was permitted to file an amended answer on October 5, 2012, alleging that the City of Clarksville ("the City") was comparatively at fault. *Id.* at 799. The plaintiff filed a separate complaint against the City in circuit court on November 26, 2012. *Id.* The City moved to dismiss the complaint as time-barred under the Tenn. Code Ann. § 20-1-119. *Id.* The circuit court granted the City's motion to dismiss, concluding that the plaintiff had failed to file "an original complaint against the State within the applicable statute of limitations" in accordance with Tenn. Code Ann. § 20-1-119(a) and, therefore, the plaintiff's claim against the City was time-barred. *Id.* at 800-01. This Court reversed based upon its conclusion that the plaintiff's written notice of claim filed with the Division on December 17, 2010, within the one-year statute of limitations, triggered the 90-day grace period. *Id.* at 801.

The Supreme Court agreed with the conclusion reached by the trial court. The Court looked to "the purpose and language of both the Claims Commission Act and the comparative fault statute." *Id.* at 804. As to the Claims Commission Act, the Court determined that "the written notice and the complaint serve different functions":

The written notice triggers a protected 90-day "settlement period" designed to facilitate the resolution of claims without litigation. The State is neither expected nor required to file an answer to the notice of the claim, and the claimant is not entitled to discovery during the protected settlement period. To adjudicate the claim, the notice alone will not suffice; the claimant must also file a complaint that complies with Rules 8 and 10 of the Tennessee Rules of Civil Procedure.

Id. at 805. Looking at the comparative fault statute and applicable caselaw, the Court reached the conclusion that a notice of claim is not the "original complaint" under Tenn. Code Ann. § 20-1-119. *Id.* at 808 (citing *Mills*, 360 S.W.3d at 370 (holding that the 90-day grace period in Tenn. Code Ann. § 20-1-119 is not a statute of limitations); *Shaffer v. Memphis Airport Auth.*, No. W2012-00237-COA-R9-CV, 2013 WL 209309, at *8 (Tenn. Ct. App. Jan. 18, 2013) (concluding that a discovery response does not constitute an answer under Tenn. Code Ann. § 20-1-119); *Grindstaff v. Bowman*, No. E2007-00135-COA-R3-CV, 2008 WL 2219274, at *4 (Tenn. Ct. App. May 29, 2008) (concluding that a letter does not constitute an answer under Tenn. Code Ann. § 20-1-119)). Because the plaintiff's original complaint against the State, filed in the Claims Commission on April 14, 2011, was not filed within the one-year statute of limitations, the 90-day grace period did not apply to save the plaintiff's claim against the City. *See id.*

Ms. Mitchell argues that *Moreno* is distinguishable from the present case because *Moreno* "dealt with the triggering event for application of Tenn. Code Ann. § 20-1-119 as

opposed to the commencement of a claim against the State after the triggering of the statute.” We find this distinction irrelevant. In the present case, as in *Moreno*, the dispositive issue is whether the notice of claim filed with the Division constitutes a complaint for purposes of Tenn. Code Ann. § 20-1-119(a). In light of the Supreme Court’s holding in *Moreno*, we must conclude that the notice of claim filed by Ms. Mitchell does not qualify as a complaint. Rather, the complaint against the State was filed in the Claims Commission on June 8, 2021, after the 90-day grace period had expired.

(2) Whether the statute of limitations defense was waived

Ms. Mitchell also argues that the State waived the statute of limitations defense because it “failed to file an answer to the Amended Complaint and raise the statute of limitations as an affirmative defense.”

Ms. Mitchell’s waiver argument is premised in part on her understanding of Tennessee Rule of Civil Procedure 12.01. She asserts that the Tennessee Rules of Civil Procedure “do not authorize the serial filing of motions to dismiss after a trial court adjudicates and denies a motion to dismiss filed pursuant to Rule 12.” Tennessee Rule of Civil Procedure 12.01 states, in pertinent part:

A defendant shall serve an answer within 30 days after the service of the summons and complaint upon the defendant. . . . The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) *if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 15 days after notice of the court’s action*; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 15 days after the service of the more definite statement.

(Emphasis added). Ms. Mitchell argues that, once the Claims Commission denied the State’s motion to dismiss, the State was required to file an answer within fifteen days. In recognition of the fact that the Claims Commission denied the State’s motion to dismiss and concurrently granted her motion to transfer the case to circuit court, Ms. Mitchell asserts that Tenn. R. Civ. P. 12.01 required the State to file an answer within fifteen days of the transfer to circuit court.³ We respectfully disagree.

In a recent case, *Rose v. Tennessee Claims Commission*, No. M2022-00453-COA-R3-CV, 2023 WL 2484813, at *4 (Tenn. Ct. App. Mar. 14, 2023), *perm. app. denied*, June

³ We note that the circuit court denied Ms. Mitchell’s motion for default, which was based upon this same reasoning, and that Ms. Mitchell has not challenged that ruling on appeal.

29, 2023, this Court stated: “The Tennessee General Assembly chose to allow claims against the state to be resolved in an administrative body called the Claims Commission” Thus, the Claims Commission is an administrative body, not a court. By statute and regulation, some of the Tennessee Rules of Civil Procedure apply to some Claims Commission proceedings. *See* Tenn. Code Ann. § 9-8-403(a)(1); TENN. COMP. R. & REGS. 0310-01-01-.01. Nonetheless, the Claims Commission is not a court; it is an administrative body that has chosen to use some of the Rules of Civil Procedure in certain proceedings. Thus, the language of Tenn. R. Civ. P. 12.01 referencing the time frame for an answer after “the court denies the motion” does not include a Claims Commission denial.

Once Ms. Mitchell’s claim against the State was transferred to the circuit court, the State filed two motions to dismiss, one motion raising the same defense denied by the Claims Commission, and one motion raising the defense of the statute of limitations.⁴ Both motions were filed prior to the circuit court hearing on March 18, 2022. In light of the timing, the effect of the two motions was the same as a single motion raising two different grounds for dismissal. Thus, we find no basis for Ms. Mitchell’s argument that the second motion to dismiss filed in circuit court was procedurally improper. Ms. Mitchell also takes the position that, in order to raise the statute of limitations defense, the State was required to file an answer and that, by failing to do so, the State waived the defense. We cannot agree.

Tennessee Rule of Civil Procedure 8.03 requires affirmative defenses, including the statute of limitations, to be raised “[i]n pleading to a preceding pleading.” Tennessee Rule of Civil Procedure 12.02 addresses how affirmative defenses are to be presented and states, in pertinent part:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, *except that the following defenses may at the option of the pleader be made by motion in writing*: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) *failure to state a claim upon which relief can be granted*, (7) failure to join a party under Rule 19, and (8) specific negative averments made pursuant to Rule 9.01. A motion making any of these

⁴ In its February 16, 2022 response to Ms. Mitchell’s motion for default, the State asserted that no complaint against the State had been filed in the circuit court and that the State’s obligation to file an answer or motion was not triggered until Ms. Mitchell filed a complaint in circuit court against the State or consolidated its amended complaint in the Claims Commission with the pending complaint against the Bells. The two matters were consolidated in the circuit court on April 22, 2022. For purposes of this appeal, we need not determine the operative complaint because, for the reasons detailed above, even under the assumption that the earliest date (the transfer from the Claims Commission to circuit court) triggered the State’s obligation to respond, the State acted in a timely manner.

defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.

Pursuant to Tennessee caselaw, a motion to dismiss based upon the expiration of the statute of limitations constitutes a motion to dismiss for failure to state a claim upon which relief can be granted. *Young ex rel. Young v. Kennedy*, 429 S.W.3d 536, 546 (Tenn. Ct. App. 2013). Thus, Tenn. R. Civ. P. 12.02 allows a litigant to raise the defense of the statute of limitations in a pre-answer motion or an answer. If the defense is raised in a pre-answer motion, Tenn. R. Civ. P. 12.01 provides that the defendant's answer will be "served within 15 days after notice of the court's action" on the defendant's motion. Until the court ruled on the State's motions to dismiss, the State was not required to file its answer.

Waiver of defenses is specifically addressed in Tenn. R. Civ. P. 12.08, which provides:

A party waives all defenses and objections which the party does not present either by motion as hereinbefore provided, or, if the party has made no motion, in the party's answer or reply, or any amendments thereto, (provided, however, the defenses enumerated in 12.02(2), (3), (4) and (5) shall not be raised by amendment), except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, the defense of lack of capacity, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15 in the light of any evidence that may have been received.

For purposes of the issue before us, it is only necessary to confirm that Tenn. R. Civ. P. 12.08 contemplates that a motion for failure to state a claim may be raised by motion or answer.⁵ *Kennedy*, 429 S.W.3d at 547.

In sum, under the applicable Rules of Civil Procedure, Ms. Mitchell's argument that the State waived the statute of limitations defense is unpersuasive. Therefore, the trial court properly granted the State's motion to dismiss.

⁵ This Court has previously recognized that a literal interpretation of some of the language of Tenn. R. Civ. P. 12.08 "would lead to absurd results and the Tennessee courts have largely ignored the literal text of the rule." *Kennedy*, 429 S.W.3d at 548 (quoting Robert Banks, Jr., & June F. Entman, TENNESSEE CIVIL PROCEDURE § 5-6(w) (3d ed. 2012)).

CONCLUSION

The judgment of the trial court is affirmed. Costs of this appeal are assessed against the appellant, Vandity Mitchell, and execution may issue if necessary.

/s/ Andy D. Bennett
ANDY D. BENNETT, JUDGE